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ABSTRACT

This paper discusses the equal time law: Section 315 of the Communications Act of 1934. Section 315 is the major legislation governing the use of the broadcasting media in the area of politics. The underlying philosophy of the law is that people have a right to a full and complete disclosure of conflicting views of news of interest. The essence of the law is that if a broadcaster allows one candidate for public office the use of broadcast facilities, an equal opportunity to all other candidates for the same office must be afforded. Many of the problems with this law are discussed including the fact that stations are not required to provide any air time at all for candidates running for public office, sometimes there are a large number of candidates running for a particular office, and the incumbent usually has an advantage over the challenger due to news coverage of both political and nonpolitical activities while the incumbent is in office. A case study of the Humphrey-McGovern debates during the California Presidential Primary in 1972 is presented and discussed. The results and conclusions of the study and recommendations based on the conclusions are presented. (TS)

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315: Another dimension of "equality"*

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315: Another dimension of "equality"

Concern for freedom of speech, equitable protection of the law, and equitable due process of the law are among the most cherished principles of the democratic process. Closely allied to each of these principles is the recognition that: 1) political speech is at the core of the First Amendment; 2) preservation of the First, Fifth and Fourteenth Amendments to the Constitution is essential if a viable political freedom is to be maintained; and, 3) the public has a right to be informed on all sides of controversial issues.

In the latter half of the twentieth century, preservation of freedom of political speech has become interwoven with legislation governing the use of electronic means of communication. With the emergence of radio and television as dominant forces in political campaigning, the attention of political analysts as well as media specialists has been directed toward the procedures and methods necessary to the obtaining of a fully informed electorate. The nature of contemporary political campaigning is profoundly affected by the equal time law--Section 315 of the Communications Act of 1934.

Section 315 is the major legislation governing the use of the broadcasting media in the arena of politics. The underlying philosophy of the law is that the people have a right to a full and complete disclosure of conflicting views on news of interest. The essence of the law is that if a broadcaster allows one candidate for public office the use of his broadcasting facilities he must afford equal opportunity to all other candidates for the same office. The original intent of the law was twofold: 1) to facilitate political debate over radio and television; and, 2) to preclude broadcasters from allowing any one candidate to monopolize the air waves.

One problem inherent within the wording of Section 315 is that a station is not required to provide any air time for candidates running for public office. The 1972 amendment to Section 312 of the Communications Act of 1934 incorporates the potential for alleviating this particular problem on the Federal level of political campaigning by stipulating that the FCC may revoke any station's license or construction permit if the licensee repeatedly refuses a candidate for Federal elective office reasonable access to the use of the air waves. However, the 1972 amendment to Section 312 does not address attention to candidates for political office on the local or state level; subsequently, the potential for a broadcaster to preclude some candidates for political office from using the air waves is still operative.

It was originally assumed broadcasters would adhere to the spirit of the law as well as the letter of the law; however, such a course of action has not always been feasible. There are often many more candidates running for any given public office than the public realizes. Subsequently the sheer logistics of providing equal opportunity for all candidates have been perceived as capable of eroding the programming structure of a particular broadcasting station as well as the right of the broadcaster to function as private enterprise. The basic dilemma confronting the broadcaster is that he is involved with a real need for realizing financial profit from the operation of his station, yet he is obligated to serve in the public interest, convenience and necessity or risk the loss of his license to broadcast. The complexity of the dilemma confronting the broadcaster assumes additional significance when one considers the need to achieve an equitable balance among: 1) the right of a political candidate for public office to freedom of speech; 2) the right of a broadcaster to maintain some semblance of balance within his programming structure; and, 3) the right of the voting

public to have access to information which will allow them to make an informed decision regarding the suitability of various candidates for a given public office.

Concomitant to the dilemma confronting broadcasters is the inability, by law, of the broadcaster to discriminate between major and splinter candidates for political office. The law says all candidates are equal and must be treated equally. Only once in the forty-six year history of Section 315 have broadcasters been afforded the opportunity of focusing upon the two leading contenders for a public office. The result was the Kennedy-Nixon debates of 1960. These debates were considered instrumental in bringing into focus the potential impact of television upon political campaigning as well as the achievement of a more fully informed electorate.

Section 315 has been a source of controversy throughout its history. Attempts to either amend or repeal the law are countless. Some allegations levied against the maintenance of the equal time provision suggest the following: 1) the cost of political campaigning via the broadcasting media is discriminatory against the less wealthy and less well known candidates running for public office; 2) the incumbent always has the advantage over the challenger due to news coverage of both political and nonpolitical activities in which the incumbent may be involved while in office; 3) there is an inherent difficulty involved in attempting to determine precisely when a political campaign commences; and, 4) the law, by nature, is inhibitory to the free flow of information. It was with the inhibition of the free flow of information and the subsequent nature of the message available to the voting public that this study was concerned.

It was determined that an examination of the content of transcripts of a series of programs ultimately involving enforcement of the equal time

law could help in assessing the validity of the allegation that Section 315 is, by nature, inhibitory to the free flow of information. The series of programs selected for the case study were the Humphrey-McGovern debates scheduled to be broadcast on special editions of Face the Nation, Meet the Press, and Issues and Answers during the California Presidential Primary, 1972.

By 1972 Presidential Primaries had become one of the great driving forces of American politics involving twenty two states and the District of Columbia.[1] The winner-take-all California Democratic primary election was to be no exception. The consensus of both news commentators and politicians was that whoever won the California Primary involving 271 delegate votes would be a heavy favorite to capture the Democratic nomination at the National Convention in Miami Beach, Florida. As reported in The Wall Street Journal, "who wins in California has obvious importance."[2] Life noted that the "California primary could be the deciding factor."[3]

Political analysts and media specialists alike viewed the June 6 California Primary as a pivotal battle between two leading contenders--Senators Hubert Humphrey and George McGovern.[4] Time described the Primary as a "head-to-head showdown between Hubert Humphrey and George McGovern."[5] Humphrey's campaign aides reportedly believed that California could be the Senator's "last hurrah" unless he could find a way to defeat McGovern there.[6]

It was as a calculated campaign strategy that, on May 18, Senator Humphrey challenged Senator McGovern to three televised debates. The purported purpose of the debates was the presentation of a full and free discussion of the issues confronting the Democratic voters of California.[7] It was believed by Humphrey's advisors that a debate format was the most effective way to show the voters where the two candidates stood on principal issues.

Humphrey's aides opined that if they (and Humphrey) could only draw McGovern's postions on such issues as defense spending, space exploration, abortion, amnesty, and tax reform out into the open, voters would start to desert McGovern's standard.[8] Joe Cerrell, Humphrey's top local strategist, commented that the hour long debates were crucial to Humphrey--they were "the whole thing--the whole campaign."[9] Newsweek reported "Humphrey's only real chance of turning things around are his three nationally televised debates with McGovern."[10] Theodore White assessed the significance of the debates on the following premises: the debates were to be issue oriented; the debates would force McGovern to take a stand; and, the conduct and strategy employed by McGovern during the course of the debates would be important to him and his campaign.[11] On May 19, 1972, the headlines read "McGovern Accepts Humphrey Challenge to Debates on TV."[12]

By May 20, arrangements had been made for the two candidates to appear on expanded editions of Face the Nation (CBS) and Issues and Answers (ABC). Arrangements for appearance on NBC's Meet the Press were not completed until May 23, 1972. The three debates were scheduled to be aired during the last nine days prior to the June 6 election: Face the Nation on May 28; Meet the Press on May 30; and, Issues and Answers on June 4. Each of the special editions of the preceding programs was expanded from one-half hour to an hour and rescheduled to be shown nationally on prime time air time during what could be considered the crucial week before the voters reported to the polls.

The significance of the debates assumed an added dimension when the three target audiences are considered.[13] The immediate audience included the 5,133,545 registered Democrat voters in the California Presidential Primary. A second target audience was composed of the uncommitted and wavering delegates who

would be attending the Democratic National Convention in Miami Beach in July. And, a third, and possibly most important, audience was the national electorate who would be voting in the November presidential election.

Another variable in assessing the significance of the televised debates between Senators Humphrey and McGovern was grounded in the conventional view of California as a state reachable mainly by radio, television and print. Sandy Vanocur commented on the uses of mass media in California campaigning:

> California is an enormous state nearly a thousand miles long. It's estimated that if each candidate took 49 aides and he and those aides tried to personally visit a dozen democratic voters each day they would be at the task until the primaries in 1996. For this reason... the concept persists of necessity that California is a media oriented state.[14]

Senator McGovern also was to comment that the cheapest way to reach the voters of California was via radio, television, and advertisements in the press.[15]

Within a week after the May 19 announcement of scheduled confrontations between Senators Humphrey and McGovern, both Mayor Yorty and Representative Chisholm requested to be included in any proposed debates between Humphrey and McGovern. An initial request was denied by the networks; a request that the Federal Communications Commission direct ABC, CBS, and NBC to either include Yorty and Chisholm in the proposed confrontations or afford them air time comparable to that being used for the scheduled confrontations was not acknowledged. Subsequently Mayor Yorty, and Representative Chisholm filed individual petitions with the United States Court of Appeals in their respective circuits against the Federal Communications Commission and the United States of America. The essence of the respective petitions was threefold: 1) the programs were not actually news programs of a nature considered exempt from

Section 315 stipulations by the Lar Daly Amendment of 1959; 2) the special editions of Face the Nation, Meet the Press, and Issues and Answers featured two arbitrarily chosen and favored candidates; and, 3) pursuant to Section 315(a) they were entitled to equal opportunity.

Mayor Yorty's petition was denied; a U.S. Court of Appeals in Washington, D.C. ruled in favor of Representative Chisholm. The Chisholm vs. the FCC and USA decision stipulated: 1) Representative Chisholm be included in the final television confrontation between Humphrey and McGovern on ABC's Issues and Answers; 2) Representative Chisholm be given a half hour of prime time on ABC prior to the California primary; and 3) CBS and NBC, carriers of the first two appearances between Humphrey and McGovern, must each provide Ms. Chisholm equal time prior to the California primary. Subsequently ABC-TV invited not only Ms. Chisholm but also Mayor Yorty and Governor Wallace to participate in the June 4 special edition of Issues and Answers. Presumably the inclusion of Yorty and Wallace was to avoid further controversy and demands for equal opportunity. The balance of the court's ruling was implemented in the following manner. CBS, also named in Ms. Chisholm's petition, provided her with thirty minutes of prime air time; they provided nothing for either Yorty or Wallace. Although not named in the Chisholm petition, NBC offered both Representative Chisholm and Mayor Yorty fifteen minutes of prime air time respectively, but they offered nothing to Wallace.

Resulting programs in the scheduled series provided data for an examination of the validity of alleged restrictive effects of the content of the special editions of Face the Nation, Meet the Press and Issues and Answers, obtained from an audio tape recording of the original broadcasts, were analyzed with regard to the following: the number of participants involved in each of the programs and the role fulfilled by each participant; the nature

of the opening and closing of each of the three programs; the topics explored on each of the three programs; the type of questions asked of each of the participants on each of the three programs; the nature of the communication flow which occurred during the course of each program; and, the areas of similarities and differences among the programs.

The Results of the Study

The data analyzed during the course of this study indicated the following.

1. Concomitant to the increase in number of guests was a decrease in the amount of time (opportunity) each participant had to expose his particular stand on any given issue.
2. The presence of a formal moderator seemed to influence: the number of interruptions, or attempted interruptions, of the individuals attempting to complete the verbalization of a thought; the total number of questions asked of the special guests; and, the average length of the contributions of each of the panelists.
3. There was a difference in the nature and content of the opening and closing remarks of the special guests on each of the broadcasts when those remarks were in direct response to a question as contrasted to the situations when an open-ended directive indicated the special guests were free to make an opening and closing statement.
4. When the equal time law was enforced during the course of a series of preplanned programs, the nature of the dominant issues being explored changed on the third in the series of three broadcasts.
5. The same categories of questions were used on all broadcasts

to interview the special guests; and, questions of information were always the dominant type of question asked.

5. Although some of the special guests on the special edition of Issues and Answers were asked the same number of questions, the nature of the content of the questions was not comparable. An example of this last observation can be found in the number and kind of questions directed to Ms. Chisholm and Mr. McGovern during the course of the special edition of Issues and Answers. Both candidates answered eleven questions; however, seven of the questions directed to Ms. Chisholm focused on whom she could support as the Democratic nominee and the status of her own candidacy while only one of the questions directed to Mr. McGovern was concerned with this particular topic of discussion.

Conclusions

Conclusions drawn from the data obtained in this study are as follows.

1. A net result of the increase in the number of guests on Issues and Answers was a lesser opportunity for the viewing electorate to obtain an in-depth understanding of the postion of any of the special guests on varying issues.
2. Concomitant to the presence of a moderator was a greater degree of formality and control over communication flow than in the absence of a moderator.
3. The variation in introductory and closing remarks was interpreted as indicative of the use of subtle constraints upon open communication and the free flow of information.
4. Enforcement of the equal time law during the course of a series of preplanned programs was interpreted as an inhibiting factor

in the development of a previously established in-depth line of questioning focused on four issues. This particular conclusion was conceived as a logical progression; when the personalities involved in human interaction change there is a corresponding change in all aspects of the communication situation.

5. The change in the special guests on the third in the series of broadcasts may have been a variable which influenced the fact that questions of information were the dominant type of question asked on each of the broadcasts. It had been anticipated that the culmination of an in-depth understanding of positions of the special guests on varying issues would manifest itself in a preponderance of questions of policy on the last in the series of special broadcasts.
6. Although the letter of the law was followed on the special edition Issues and Answers, the nature and content of the questions asked of some of the special guests indicated a recognition of only two viable candidates. It might be further suggested that the enforcement of the law, in this particular instance, had a discriminatory effect.
7. Collectively the results of the analysis of transcripts suggest that the enforcement of the equal time law during the course of a specific series of preplanned programs did have an influence on the free flow of information and did serve to alter the kind of message to which the voting public was exposed.

The significance of the results of this study assumes an additional dimension when it is recognized that by 1976 at least thirty states will be conducting Presidential primaries among an unknown number of candidates. A major area of concern throughout the course of these primaries, as well as other elections, might well focus on the enforcement of the equal time law as a significant variable: 1) in the maintenance of freedom of political speech; 2) in the preservation of the First, Fifth and Fourteenth Amendments to the Constitution; and, 3) in the public's right to be informed on all sides of controversial issues.

If the results of this particular case study have any generalizability relevant to current political broadcasting activities, then it can also be reasoned to follow that although all candidates for any given political office may be considered equal on a technical basis,

> . . . as Section 315 works out in practice, some candidates, like some creatures in George Orwell's Animal Farm, are "more equal" than others.[16]

Footnotes

[1]Theodore H. White, The Making of the President 1972 (New York: 1973), p. 74. Also see "The McGovern Phenomenon and How it Grew", U.S. News and World Report, June 12, 1972, p. 29+.

[2]"Jobs vs. Arms: Humphrey, McGovern, Clashing in California, Emphasize One Theme", The Wall Street Journal, May 30, 1972, p. 1.

[3]"Inside the Winning Team", Life Magazine, June 2, 1972, p. 32. Also see "The McGovern Issue", Time, May 22, 1972, p. 19.

[4]Other noteworthy candidates included Congresswoman Shirley Chisholm of New York, Mayor Sam Yorty of Los Angeles, and Governor George Wallace of Alabama. However, Representative Chisholm and Mayor Yorty were perceived as minority candidates. Governor Wallace was not considered a leading contender for the nomination in the California primary due to: 1) the fact that he was a write-in candidate on the California ballot and historically write-in candidates had not compiled a large percent of the vote tabulated in any given election; and, 2) his hospitalization brought on by a gunshot wound had curtailed his campaign activities.

[5]"The Big Showdown in California", Time, June 5, 1972, p. 21.

[6]Ibid.

[7]Carl Greenberg, "2 Humphrey-McGovern TV Debates Arranged", Los Angeles Times, May 20, 1972, Part II, p. 1.

[8]Theodore H. White, op. cit., p. 132. Also see "Does McGovern Have It Made?" Newsweek, June 5, 1972, p. 33.

[9]Time, op. cit.

[10]"California: Last Big Stop Before Miami", Newsweek, June 5, 1972, p. 37.

[11]Theodore H. White, "Decision '72 with Walter Cronkite", KNXT, Ch. 2, Los Angeles, November 11, 1972.

[12]Los Angeles Times, May 19, 1972, Part I, p. 1.

[13]Ted Sell, "Politicians Debate: Old Tradition", Los Angeles Times, May 28, 1972, Section A., p. 25.

[14]Sandy Vanocur, "Image Making in California", Channel 28, KCET, Los Angeles, 8:00 p.m., May 31, 1972. Also see: Theodore White, op. cit., p. 150; "Campaigning in the Golden State", Time, June 5, 1972, p. 22; "Sick of TV Ads for Politicians, You Reach for the Radio", Wall Street Journal, May 15, 1972, p. 1.

[15]Senator George McGovern, "Newsmakers", Channel 2, CBS, Los Angeles, 3:00 p.m., June 4, 1972.

[16]E.K. Meade, Jr., "CBS Network Memo to Editorial Page Directors", May 24, 1968, p. 3.